

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,

NO. CR. 97-54 WBS

v.
TANH HUU LAM,

ORDER RE: MOTION TO INVALIDATE
GUILTY PLEA

Defendant.

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On June 25, 1999, defendant Tanh Huu Lam pled guilty to committing arson resulting in death in violation of 18 U.S.C. § 844(i). Defendant was then sentenced on September 15, 1999, to life imprisonment, a \$100,000 fine, and \$115,000 in restitution. Presently before the court is defendant's motion to invalidate his guilty plea pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure. The court of appeals affirmed his conviction on June 4, 2001. United States v. Lam, 251 F.3d 852 (9th Cir.), cert. denied, 534 U.S. 1013 (2001).

Thereafter, defendant filed a petition for habeas corpus pursuant to 28 U.S.C. § 2255, which he supplemented with

1 additional claims ten days later, including a claim alleging that
2 his guilty plea was involuntary. The court held that defendant
3 had procedurally defaulted this claim because he did not raise it
4 on appeal, and the Ninth Circuit affirmed the court's decision on
5 December 19, 2003. United States v. Lam, 84 Fed. App'x 892 (9th
6 Cir. 2003).

7 On January 18, 2005, defendant moved to vacate his
8 guilty plea pursuant to Rule 11(e) of the Federal Rules of
9 Criminal Procedure and Rule 60(b) of the Federal Rules of Civil
10 Procedure. That motion was denied on May 2, 2005, and the court
11 denied defendant's subsequent motion for reconsideration on May
12 20, 2005. Thereafter, defendant filed another motion pursuant to
13 Rule 60(b) on September 15, 2005, which challenged the integrity
14 of his § 2255 proceedings. The court again denied defendant's
15 motion as a successive § 2255 petition on November 28, 2005.
16 Considering defendant's September 15, 2005 motion on its merits,
17 the court of appeals affirmed in United States v. Lam, 228 Fed.
18 App'x 739 (9th Cir. 2007).

19 As in his motion filed on January 18, 2005, defendant
20 now moves once more to invalidate his guilty plea pursuant to
21 Rule 11(e) of the Federal Rules of Criminal Procedure. That Rule
22 instructs, "After the court imposes sentence, the defendant may
23 not withdraw a plea of guilty or nolo contendere, and the plea
24 may be set aside only on direct appeal or collateral attack."
25 Fed. R. Crim. P. 11(e). Defendant contends that his guilty plea
26 should be invalidated under this provision because he was
27 "affirmatively misled by his court appointed lawyers, the
28 government's attorneys, and the court," such that he entered his

1 guilty plea "without understanding the effect . . . of the plea."
2 (Docket No. 431 at 1.)

3 It is well-established that "[o]nce a conviction is
4 entered, the district court's jurisdiction over the matter is
5 limited, and an attack on the conviction must have a
6 jurisdictional basis." United States v. Montreal, 301 F.3d 1127,
7 1133 (9th Cir. 2002) (citing Tripati v. Henman, 843 F.2d 1160,
8 1162 (9th Cir. 1988)). As Rule 11(e)'s text makes plain, that
9 Rule does not establish an independent basis for jurisdiction to
10 hear defendant's motion, and defendant's motion is properly
11 construed as one made pursuant to § 2255. See id. ("Generally,
12 the vehicle for challenging a conviction in the district court is
13 a 28 U.S.C. § 2255 petition."); United States v. Noriega-Millan,
14 110 F.3d 162, 166 (1st Cir. 1997) (providing that, after
15 sentencing, "a defendant who seeks to set aside his guilty plea .
16 . . may raise the claim only on direct appeal or by motion under
17 28 U.S.C. § 2255" (internal quotation marks omitted)); United
18 States v. Orleans-Lindsay, 572 F. Supp.2d 144, 169 (D.D.C. 2008)
19 ("[T]he Court is cognizant that although Petitioner frames his
20 Motion as one to withdraw his guilty plea, it is in fact a motion
21 to set aside his plea under 28 U.S.C. § 2255.").

22 Under 28 U.S.C. § 2255(h), "a second or successive
23 habeas petition must be certified as provided in section 2244 by
24 a panel of the appropriate court of appeals" A district
25 court cannot permit a defendant to "circumvent the requirements
26 of AEDPA by simply styling the petition" as a motion to
27 invalidate his guilty plea. Montreal, 301 F.3d at 1133; see
28 United States v. Chilcote, 232 Fed. App'x 708, 709 (9th Cir.

1 2007) ("Had Chilcote styled this motion as a § 2255 petition, it
2 clearly would have been barred by the rule regarding successive §
3 2255 petitions.").

4 The Ninth Circuit's recent decision in Phelps v.
5 Alameida, 569 F.3d 1120 (9th Cir. 2009), does not affect the
6 court's decision here. In Phelps, the Ninth Circuit reversed the
7 district court's refusal to reconsider its determination that the
8 defendant's Rule 60(b) motion was a successive habeas petition.
9 Because the Rule 60(b) motion in Phelps challenged the § 2255
10 proceedings rather than the original conviction, the Ninth
11 Circuit held that the district court should have reconsidered the
12 defendant's motion in light of Gonzalez v. Crosby, 545 U.S. 524
13 (2005), which held that such motions are not successive habeas
14 petitions.

15 Here, although the reasoning in Phelps and Gonzalez was
16 directly applicable to defendant's Rule 60(b) motion filed on
17 September 15, 2005, see United States v. Lam, 228 Fed. App'x 739
18 (9th Cir. 2007), it is not applicable to defendant's instant
19 motion to invalidate his guilty plea pursuant to Rule 11(e).
20 This motion challenges defendant's original conviction, not his
21 subsequent § 2255 proceeding, and the plain text of Rule 11(e)
22 states that such motions may be brought "only on direct appeal or
23 collateral attack." Because the instant district-court
24 proceeding is not an appeal, it must be a collateral attack,
25 which in turn invokes § 2255(h)'s bar against successive habeas
26 petitions.

27 Accordingly, because defendant has not obtained an
28 order from the Ninth Circuit authorizing a successive petition

1 for habeas corpus, the court must deny his motion. United States
2 v. Allen, 157 F.3d 661, 664 (9th Cir. 1998).

3 IT IS THEREFORE ORDERED that defendant's motion to
4 invalidate his guilty plea be, and the same hereby is, DENIED.

5 DATED: August 19, 2009

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8 WILLIAM B. SHUBB
9 UNITED STATES DISTRICT JUDGE

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